

EXHIBIT 2

Page 1

George R. Nisbet Jr
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

X
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IN RE: AUTOMOTIVE PARTS
*

ANTITRUST LITIGATION
*

In re: ALL CASES
*

THIS DOCUMENT RELATES TO
* No.: 12-md-02311
*

All Dealership Actions
*

All End Payor Actions
*

X

HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

TELEPHONIC HEARING BEFORE
GENERAL MASTER GENE J. ESSHAKI

Thursday, March 3, 2016

2:40 p.m.

Veritext Legal Solutions
Mid-Atlantic Region
1250 Eye Street NW - Suite 1201
Washington, D.C. 20005

George R. Nisbet Jr

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Page 3

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1 George R. Nisbet Jr

2 P R O C E E D I N G S

3 THE COURT: Judge Esshaki.

4 MR. CAROME: Thank you very much
5 for taking this call. My name is
6 Patrick Carome. We've met before. I'm
7 one of the lawyers for Denso, one of the
8 defendants.

9 I'm here taking a deposition of
10 George Nisbet, who is the co-owner and
11 senior officer of one of the Auto Dealer
12 Plaintiffs, Thornhill.

13 Right across the table from me is
14 Brian Herrington, who I know you also
15 know well, who is representing the Auto
16 Dealers and Mr. Nisbet in this
17 deposition.

18 We have been going since about
19 9:00 o'clock, and it has been going very
20 well. We have come to a point where I
21 want to ask questions regarding filings
22 including an affidavit that were filed
23 in a lawsuit brought by customers of the
24 Thornhill dealership against the
25 Thornhill dealership and several

1 George R. Nisbet Jr
2 individuals at the Thornhill dealership,
3 including the witness George Nisbet, who
4 is also sitting in the room here at his
5 deposition.

6 The lawsuit concerns, among other
7 things, a policy that the Thornhill
8 Superstore had for a number of years,
9 starting around 2000 and lasting until
10 approximately 2006, to advertise that it
11 would sell its new vehicles, GM vehicles
12 at \$1 over invoice. And this was a
13 litigation -- it ultimately got
14 certified as a class action litigation
15 against Thornhill. It was ultimately
16 settled. And as a result of the
17 settlement there's already been
18 testimony from Mr. Nisbet that this \$1
19 over invoice selling practice stopped or
20 the advertising of it and the practice
21 stopped, and related policies including
22 the inflation of the sales price shown
23 on the contract over the real agreed
24 amount were also stopped as a result of
25 this.

1 George R. Nisbet Jr

2 Mr. Nisbet, as I said, was a named
3 defendant in this suit. The suit ended
4 in approximately 2006.

5 You will recall that the class
6 period for these cases goes back
7 generally to 1998, and a couple cases
8 even earlier than that. The period when
9 this practice resulted in this
10 litigation was in place for the
11 Thornhill's dealer covers a significant
12 portion of the class period and relates
13 to the pricing of new vehicles by the
14 dealership.

15 There are pleadings in which this
16 sales practice were described and argued
17 about and perhaps most importantly there
18 is an affidavit, about a four-page
19 affidavit with some exhibits that Mr.
20 Nisbet himself signed and filed
21 describing in detail how four different
22 vehicles by the four named plaintiffs in
23 that case were priced.

24 It was hotly contested. And I
25 think that it is very important that I

1 George R. Nisbet Jr
2 be able to question the witness, who
3 doesn't have a good -- a very good
4 recollection of exactly the details of
5 these practices 10 years ago.

6 I want to use this affidavit and
7 other filings in the proceeding to show
8 him and to get him to explain the
9 process, with him being able to see the
10 actual documents that he either had
11 submitted on his behalf or even signed
12 as an affidavit, so that I can get a
13 clear understanding or a clearer
14 understanding of this dealer's pricing
15 practices.

16 There is nothing more central to
17 this litigation for the auto dealers and
18 the end payors than how auto dealers
19 priced vehicles. This covers a
20 significant portion of the class period.

21 I think there can be no question
22 that I'm entitled to ask the witness
23 about this.

24 Mr. Herrington, in a very
25 respectful way, has simply instructed

1 George R. Nisbet Jr
2 the witness not to answer any questions
3 I ask about this.

4 THE COURT: Okay. Mr. Herrington,
5 your thoughts, please.

6 MR. HERRINGTON: Yes, your Honor.
7 Thank you. I will be quick. It is two
8 quick points.

9 One, when we were, as your Honor
10 well knows going back and forth about
11 30(b)(6) topics and motions to compel
12 and whatnot, your Honor ruled that other
13 class actions that these dealers were
14 involved in were irrelevant.

15 And what Mr. Carome is wanting to
16 ask about now is, he's actually pulled
17 out pleadings from another class action.

18 So number one, the first point is,
19 your Honor has already ruled other class
20 actions are irrelevant.

21 Second, we didn't reach this
22 impasse at the beginning of this
23 deposition. We have been here for hours
24 and we have gone through pricing
25 documents, sales contracts, invoices,

1 George R. Nisbet Jr
2 actual purchase agreements in
3 excruciating detail.

4 Mr. Nisbet has testified to how
5 this dollar-over-invoice practice
6 worked. He has answered numerous
7 questions about pricing.

8 So I let all those go. But when we
9 started pulling out pleadings, that is
10 when I instructed the witness not to
11 answer based on, number one, we covered
12 this. But number two, your Honor's
13 ruling that what happened in other class
14 actions just are not relevant here, and
15 that is --

16 THE COURT: Gentlemen, I understand
17 completely what is happening here. And
18 frankly, I'm at a disadvantage because
19 I'm in the midst of a mediation right
20 now and I can't recall -- counsel,
21 obviously you're closer to me to this
22 than I am right now, that none of the
23 files are in front me.

24 What I'm going to instruct is that
25 the testimony be taken as a separate

George R. Nisbet Jr

record, that have the court reporter set up a separate record, a separate transcript for this examination, that it is to be sealed and it's not to be filed with anybody. And that then the counsel can ask via motion that it be admitted or counsel can ask that it be stricken. I don't care who the moving party is. And let me address that in the normal course.

It will come up having in front of me the parties written positions and the other ruling that I had made that will impact on it.

But as long as we have the witness there, my instruction is to take the testimony under separate record and preserve it for later; we revisit it later on whether it should be admitted or not admitted, whether it be stricken or whatever.

So please, set up a separate record. I'm going to permit the questions to go forward. That doesn't

1 George R. Nisbet Jr
2 mean it's going to be admitted. It
3 simply means that we are going to
4 preserve it and we'll address it at a
5 later date.

6 MR. HERRINGTON: Thank you, your
7 Honor.

8 MR. CAROME: Thank you very much,
9 your Honor.

10 THE COURT: Thank you for calling
11 me. Have a good day. I hope you
12 conclude this quickly. I understand the
13 tediousness -- the tedious nature of
14 depositions.

15 MR. CAROME: Thank you for taking
16 this call.

17 (End of proceedings at 2:53 p.m.)
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Page 12

George R. Nisbet Jr

CERTIFICATE

The foregoing transcript, page 1 through 12 is a true and correct transcription of the proceedings taken before me at the time and place set forth on the title page hereof.

I further certify that I am not of counsel to any of the parties to said cause or otherwise interested in the event thereof.

IN WITNESS WHEREOF I hereunto set my hand and affix official seal this 6th day of March, 2016.



RANDI GARCIA, COURT REPORTER, RPR

[& - examination]

Page 1

&	action 5:14 8:17	c	d
& 3:4	actions 1:10,10 8:13	c 2:2 4:2	d 4:2
0	8:20 9:14	call 4:5 11:16	d.c. 1:23 2:18
02311 1:9	actual 7:10 9:2	calling 11:10	date 11:5
1	address 10:10 11:4	care 10:9	day 11:11 12:14
1 5:12,18 12:3	admitted 10:7,20,21	carome 2:13 4:4,6	dealer 2:3 4:11 6:11
10 7:5	11:2	8:15 11:8,15	dealer's 7:14
12 1:9 12:4	advertise 5:10	case 6:23	dealers 4:16 7:17,18
1201 1:22	advertising 5:20	cases 1:8 6:6,7	8:13
1250 1:22	affidavit 4:22 6:18	cause 12:10	dealership 1:10 4:24
1875 2:17	6:19 7:6,12	central 7:16	4:25 5:2 6:14
1998 6:7	affix 12:13	certificate 12:2	defendant 6:3
2	ago 7:5	certified 5:14	defendants 2:11 4:8
2000 5:9	agreed 5:23	certify 12:8	denso 2:11,12 4:7
20005 1:23	agreements 9:2	cihlar 3:3	deposition 4:9,17
20006 2:18	america 2:12	class 5:14 6:5,12	5:5 8:23
2006 5:10 6:4	amount 5:24	7:20 8:13,17,19	depositions 11:14
2016 1:18 12:14	answer 8:2 9:11	9:13	described 6:16
202.663.6000 2:19	answered 9:6	clear 7:13	describing 6:21
22030 3:6	antitrust 1:7	clearer 7:13	detail 6:21 9:3
2:40 1:19	anybody 10:6	closer 9:21	details 7:4
2:53 11:17	approximately 5:10	come 4:20 10:12	different 6:21
3	6:4	compel 8:11	disadvantage 9:18
3 1:18	argued 6:16	completely 9:17	district 1:2,3
30 8:11	atlantic 1:22	concerns 5:6	division 1:4
39158 2:7	attorneys 2:3,11 3:2	conclude 11:12	document 1:9
4	auto 2:3 4:11,15	confidential 1:14	documents 7:10
4041 3:5	7:17,18	contested 6:24	8:25
5	automotive 1:6	contract 5:23	dollar 9:5
5th 3:5	avenue 2:17	contracts 8:25	dorr 2:16
6	b	corporation 2:11	drive 3:5
6 8:11	b 8:11	correct 12:4	e
601.376.9331 2:8	back 6:6 8:10	counsel 9:20 10:6,8	e 2:2,2 4:2,2
6th 12:13	based 9:11	12:9	earlier 6:8
9	beginning 8:22	couple 6:7	eastern 1:3
927 2:6	behalf 7:11	course 10:11	either 7:10
9:00 4:19	boies 3:4	court 1:2 4:3 8:4	ended 6:3
a	boies.com 3:7	9:16 10:2 11:10	entitled 7:22
able 7:2,9	box 2:6	12:17	esq 2:4,13,14,15 3:3
	brian 2:4,9 4:14	covered 9:11	esshaki 1:17 4:3
	brought 4:23	covers 6:11 7:19	event 12:11
		customers 4:23	exactly 7:4
		cutler 2:16	examination 10:4

[excruciating - practice]

Page 2

excruciating 9:3 exhibits 6:19 explain 7:8 eye 1:22	hereunto 12:12 herrington 2:4,5 4:14 7:24 8:4,6 11:6 herringtonlawpa.c... 2:9 highly 1:14 honor 8:6,9,12,19 11:7,9 honor's 9:12 hope 11:11 hotly 6:24 hours 8:23	l lasting 5:9 law 2:5 lawsuit 4:23 5:6 lawyers 4:7 legal 1:22 litigation 1:7 5:13 5:14 6:10 7:17 llp 2:16 3:4 long 10:16	number 5:8 8:18 9:11,12 numerous 9:6 nw 1:22
f		m	o
fairfax 3:6 filed 4:22 6:20 10:5 files 9:23 filings 4:21 7:7 first 8:18 floor 3:5 foregoing 12:3 forth 8:10 12:7 forward 10:25 four 6:18,21,22 frankly 9:18 front 9:23 10:12 further 12:8	i impact 10:15 impasse 8:22 important 6:25 importantly 6:17 including 4:22 5:3 5:21 individuals 5:2 inflation 5:22 instruct 9:24 instructed 7:25 9:10 instruction 10:17 interested 12:10 international 2:12 invoice 5:12,19 9:5 invoices 8:25 involved 8:14 irrelevant 8:14,20	m 3:3 march 1:18 12:14 master 1:17 matt 2:14 md 1:9 mean 11:2 means 11:3 mediation 9:19 met 4:6 michigan 1:3 mid 1:22 midst 9:19 mississippi 2:7 motion 10:7 motions 8:11 moving 10:9	o 4:2 o'clock 4:19 obviously 9:21 officer 4:11 official 12:13 okay 8:4 order 1:14 owner 4:10
g		n	p
g 4:2 garcia 12:17 gene 1:17 general 1:17 generally 6:7 gentlemen 9:16 george 1:1 2:1 3:1 4:1,10 5:1,3 6:1 7:1 8:1 9:1 10:1 11:1 12:1 gm 5:11 go 9:8 10:25 goes 6:6 going 4:18,19 8:10 9:24 10:24 11:2,3 good 7:3,3 11:11	j 1:17 2:13 jr 1:1 2:1 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 judge 4:3	n 2:2 4:2 n.w. 2:17 name 4:5 named 6:2,22 nathan 3:3 nature 11:13 ncihlar 3:7 new 5:11 6:13 nicolas 2:15 nisbet 1:1 2:1 3:1 4:1,10,16 5:1,3,18 6:1,2,20 7:1 8:1 9:1 9:4 10:1 11:1 12:1 normal 10:10	p 2:2,2 4:2 p.a. 2:5 p.m. 1:19 11:17 p.o. 2:6 page 6:18 12:3,7 parties 10:13 12:9 parts 1:6 party 10:9 patrick 2:13 4:6 patrick.carome 2:20 payor 1:10 3:2 payors 7:18 pennsylvania 2:17 period 6:6,8,12 7:20 permit 10:24 pickering 2:16 place 6:10 12:6 plaintiffs 2:3 3:2 4:12 6:22 pleadings 6:15 8:17 9:9 please 8:5 10:23 point 4:20 8:18 points 8:8 policies 5:21 policy 5:7 portion 6:12 7:20 positions 10:13 practice 5:19,20 6:9 6:16 9:5
h	k kirby 2:15 know 4:14,15 knows 8:10		
hale 2:16 hand 12:13 happened 9:13 happening 9:17 hearing 1:16 hereof 12:7			

[practices - years]

Page 3

<p>practices 7:5,15 preserve 10:19 11:4 price 5:22 priced 6:23 7:19 pricing 6:13 7:14 8:24 9:7 proceeding 7:7 proceedings 11:17 12:5 process 7:9 protective 1:14 pulled 8:16 pulling 9:9 purchase 9:2 pursuant 1:14</p>	<p>right 4:13 9:19,22 room 5:4 rpr 12:17 ruled 8:12,19 ruling 9:13 10:14</p>	<p>taken 9:25 12:5 tedious 11:13 tediousness 11:13 telephone 2:20 telephonic 1:16 testified 9:4 testimony 5:18 9:25 10:18 thank 4:4 8:7 11:6,8 11:10,15 thereof 12:11 things 5:7 think 6:25 7:21 thornhill 4:12,24,25 5:2,7,15 thornhill's 6:11 thoughts 8:5 thursday 1:18 time 12:6 title 12:7 topics 8:11 transcript 10:4 12:3 transcription 12:5 true 12:4 two 8:7 9:12</p>	<p>wanting 8:15 washington 1:23 2:18 way 7:25 we've 4:6 whatnot 8:12 whereof 12:12 wilmer 2:16 wilmerhale.com 2:20 witness 5:3 7:2,22 8:2 9:10 10:16 12:12 worked 9:6 worthington 2:14 written 10:13</p>
q			
<p>question 7:2,21 questions 4:21 8:2 9:7 10:25 quick 8:7,8 quickly 11:12</p>	<p>s 2:2 4:2 sales 5:22 6:16 8:25 seal 12:13 sealed 10:5 second 8:21 see 7:9 sell 5:11 selling 5:19 senior 4:11 separate 9:25 10:3,3 10:18,23 set 10:2,23 12:6,12 settled 5:16 settlement 5:17 show 7:7 shown 5:22 signature 12:15 signed 6:20 7:11 significant 6:11 7:20 simply 7:25 11:3 sitting 5:4 solutions 1:22 southern 1:4 started 9:9 starting 5:9 states 1:2 stopped 5:19,21,24 straus 3:4,7 street 1:22 stricken 10:8,21 submitted 7:11 suit 6:3,3 suite 1:22 superstore 5:8</p>		
r		u	
<p>r 1:1 2:1,2 3:1 4:1,2 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 randi 12:17 reach 8:21 real 5:23 recall 6:5 9:20 recollection 7:4 record 10:2,3,18,24 regarding 4:21 region 1:22 related 5:21 relates 1:9 6:12 relevant 9:14 reporter 10:2 12:17 representing 4:15 respectful 7:25 result 5:16,24 resulted 6:9 revisit 10:19 ridgeland 2:7</p>		<p>ultimately 5:13,15 understand 9:16 11:12 understanding 7:13 7:14 united 1:2 university 3:5 use 7:6</p>	
		v	
		<p>vehicles 5:11,11 6:13,22 7:19 veritext 1:22 2:15 virginia 3:6 virtual 2:15</p>	
		w	
	<p>table 4:13 take 10:17</p>	<p>want 4:21 7:6</p>	

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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